

Appl. No.: 10/718,217  
Amdt. Dated: June 30, 2009  
Reply to Office action of April 9, 2009

### REMARKS/ARGUMENTS

The amendments and remarks below are in response to the Office Action mailed on April 9, 2009 in the above-listed patent application. As explained in further detail below, Claims 1-5, 8, 9, 14, 22, 24, and 26-28 have been amended for clarification, and Claims 29-33 have been added. Claim 15 has been canceled. In light of the amendments and subsequent remarks, Applicants respectfully request reconsideration and allowance of the claims.

In the Office Action, the Examiner provisionally rejects Claims 1, 10-12, and 16-28 under 35 U.S.C. §101 as claiming the same invention as Claims 1, 7-9, 17-28, 46, and 47 of U.S. Appl. No. 10/669,450. Applicants respectfully request that the obviousness-type double patenting rejection be held in abeyance until Claims 1, 7-9, 17-28, 46, and 47 of copending U.S. Appl. No. 10/669,450 are allowed, or until the provisional rejection is the only rejection remaining in the present application and/or co-pending Application No. 10/669,450.

The Examiner also rejects Claims 1-28 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,629,994 to Gomez et al. In addition, the Examiner rejects Claims 1-28 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,258,121 to Yang et al. Gomez discloses cylindrical rings 30 connected by undulating links 54, as shown in Figure 6A. The undulating links include curved portions 56 and straight portions 58. Yang was cited by the Examiner as also disclosing independent Claims 1 and 27. Yang's stent is formed by wire 10 and is coated with hydrophilic and/or hydrophobic polymer material in different ratios (see col. 2, lines 54-56 of Yang). The stent is coated with the polymer by spraying, dipping, or extrusion (see col. 2, lines 60-65 and col. 4, lines 42-43 of Yang).

Initially, Applicants note that in the Office Action, the Examiner has failed to provide Applicants with a sufficient claim construction or interpretation of the cited reference so as to enable the Applicants to effectively formulate a response. See MPEP §706 and 37 C.F.R. §1.104(a-b). In the instant case, other than paraphrasing portions of Applicants' claim language with annotated citations to the cited references, the Examiner provides no specific finding or other explanation regarding several of Applicants' claims, the cited references, or the application of the cited references to Applicants' claims. The Examiner does not even address several of Applicants' claims. Thus, the Examiner fails to provide a clear explanation regarding actions

Appl. No.: 10/718,217  
Amdt. Dated: June 30, 2009  
Reply to Office action of April 9, 2009

taken during prosecution of the present application. In view of the foregoing, should the Examiner continue to reject the claims as being anticipated by the cited references or on any other ground, Applicants respectfully request that the Examiner submit on the record specific findings as to the construction being applied to the pending claims, an explanation of the references being cited against the pending claims, and how the cited references disclose the recited features of the claimed invention.

In any event and in order to further distinguish the cited references, independent Claims 1 and 27 have been amended. In this regard, Claim 1 has been amended to recite that the medical appliance further includes a compliant cover coupled with the scaffolding such that the cover conforms to the interior surface of the scaffolding and at least a portion of the struts between the interior and exterior surfaces of the scaffolding. Claim 27 has been amended to recite that the annealing step includes annealing a compliant cover to the stent by applying heat to the cover such that the cover conforms to the interior surface of the scaffolding and at least a portion of the struts between the interior and exterior surfaces of the scaffolding. For example, FIGS. 1, 3, and 4 illustrate a compliant cover (200) that conforms to the interior of the stent struts (100) and at least partially between the inner (120) and outer (140) surfaces.

In contrast to amended Claims 1 and 27, Gomez does not teach or suggest employing a cover at all. While Yang discloses applying a coating continuously over a stent body, Yang does not disclose that the coating is compliant or conforms to the interior surface of the stent and at least partially between the interior and exterior surfaces of the stent. Furthermore, with regard to method Claim 27, the Examiner simply states that: "As to claims 46-48, wherein Gomez et al device is inherently capable of having the method steps of coating the stent (30) as being claimed"; and Yang is "capable of using the method steps as claimed in claims 46-47, for coating stent (10)." Applicants request clarification regarding these rejections given that the Examiner is apparently referring to Claims 27 and 28 and has simply ignored the steps required by the method of Claims 27 and 28. Other than providing a conclusory statement that the claimed method is inherent in light of Gomez and Yang, the Examiner provides no rationale or evidence supporting the finding of inherency. Therefore, Applicants request that the Examiner provide evidentiary support for the rejections of Claims 1 and 27 (see MPEP §2112(IV)).

Appl. No.: 10/718,217  
Amdt. Dated: June 30, 2009  
Reply to Office action of April 9, 2009

In light of the aforementioned amendments and remarks, Applicants respectfully submit that none of the cited references, taken individually or in combination, teaches or suggests independent Claims 1 and 27 and that all of the rejections are overcome. The remaining claims depend from, and further patentably distinguish, Claims 1 and 27, and are also allowable for at least those reasons discussed above.

Furthermore, independent Claim 31 has been added and includes similar recitations as that of independent Claim 1. However, Claim 31 alternatively recites that the cover is coupled with the interior surface of the scaffolding such that the cover defines a smooth interior surface within the lumen of the scaffolding. For instance, FIGS. 2 and 5 of the present application illustrate that the cover (200) forms a smooth inner surface within the stent. In contrast, Gomez does not disclose a cover at all, while Yang discloses no more than that a coating may be used. Thus, neither reference teaches or suggests new Claim 31.

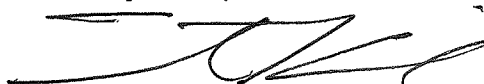
Appl. No.: 10/718,217  
Amdt. Dated: June 30, 2009  
Reply to Office action of April 9, 2009

### CONCLUSION

In view of the amendments and remarks presented above, it is respectfully submitted that all of the present claims of the present application are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicant's undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Trent A. Kirk  
Registration No. 54,223

**Customer No. 00826**

**ALSTON & BIRD LLP**

Bank of America Plaza

101 South Tryon Street, Suite 4000

Charlotte, NC 28280-4000

Tel Charlotte Office (704) 444-1000

Fax Charlotte Office (704) 444-1111

**ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON June 30, 2009.**

LEGAL02/31383827v1